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17 *Attorneys for Plaintiff and the Settlement Class*

18
19 **UNITED STATES DISTRICT COURT**
20 **EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION**

21 ROBERT MARTINEZ, an individual, on behalf
22 of himself, all others similarly situated,

23 Plaintiff,

24 v.

25 KNIGHT TRANSPORTATION, INC. d/b/a
26 ARIZONA KNIGHT TRANSPORTATION,
27 INC.; and DOES 1 thru 50, inclusive,

28 Defendants.

CASE NO.: 1:16-CV-01730-DAD-SKO
[Class Action]

**DECLARATION OF CRAIG J.
ACKERMANN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

Date: September 20, 2023

Time: 9:30 a.m.

Courtroom: 7, 6th Floor

Judge: Hon. Dale A. Drozd

Magistrate: Hon. Sheila Oberto

Removal Filed: November 14, 2016

1 I, Craig J. Ackermann, Esq., declare as follows:

2 1. I am an attorney licensed to practice law before this Court and the federal and state courts
3 of California, Washington State, and Texas. I am over 18 years of age. I have personal knowledge of
4 the facts set forth in this declaration and could and would testify competently to them.

5 2. I am a founding shareholder in the law firm of Ackermann & Tilajef, P.C., co-counsel of
6 record (along with Julian Hammond of HammondLaw, P.C.) for Plaintiff Robert Martinez (“Plaintiff”
7 or “Class Representative”) and the proposed settlement class (the “Class”) in the above-captioned
8 matter. I submit this Declaration in support of Plaintiff’s Motions for Final Approval of Class Action
9 Settlement (forthcoming) and Attorneys’ Fees and Costs (filed herewith).

10 3. I have no knowledge of the existence of any conflicting interests between my firm and
11 any of its attorneys and our co-counsel on the one hand, and Plaintiff or any other Class Member, on the
12 other.

13 Introduction

14 4. The Court has preliminarily approved the class action settlement between Plaintiff and
15 Defendant KNIGHT TRANSPORTATION, INC. (“Defendant” or “Knight”) (collectively with
16 Plaintiff, the “Parties”). See Order preliminarily approving the settlement (the “PA Order”) (Doc. 84).
17 The settlement administration process as set forth in the PA Order and the Stipulation of Class and
18 PAGA Representatives Action Settlement and Release (the “Settlement” or “Settlement Agreement”) is
19 close to completion, as will be set forth in the declaration of the Settlement Administrator submitted
20 with the forthcoming Motion for Final Approval of Class Action Settlement. In accordance with reports
21 from the Settlement Administrator, as of the date of this filing, there have been no opt-outs and no
22 objections to the Court-approved Notice of Proposed Class Action Settlement and PAGA Claims
23 Settlement that was mailed out by the Settlement Administrator to all Class Members on May 26, 2023.
24 The Settlement Administrator will submit a declaration after the response deadline of July 25, 2023 to
25 update the Court on the final administration results. Plaintiff now seeks final approval of the Settlement,
26 including Class Counsel’s award of attorneys’ fees in the amount of 25% of the Settlement amount (i.e.
27 \$100,000.00) to be shared amongst the above-captioned law firms representing the Class, which
28 represents a fraction of Class Counsel’s total lodestar. Plaintiff also seeks reimbursement for litigation

1 costs.

2 5. Whereas proceeding with litigation would impose significant risk of no recovery as well
3 as ongoing, substantial additional expenditures of time and resources, the Settlement achieved confers
4 a benefit on the Class. If Settlement were not achieved, continued litigation of the claims would take
5 substantial time and possibly confer no benefit on Class Members. By contrast, the Settlement will yield
6 a prompt, certain, and substantial recovery for Class Members, which also benefits the Parties and the
7 Court. Counsel on both sides share the view that this is a fair and reasonable Settlement in light of
8 Defendant's defenses to Plaintiff's claims and damages calculations, as fully discussed (and to be
9 discussed further) in Plaintiff's extensive briefing in support of both preliminary and final approval of
10 the Settlement.

11 6. Through my practice, I have gained significant experience regarding the obligations and
12 burdens of representing a class. This knowledge has allowed me and my firm, Ackermann & Tilajef,
13 P.C., to successfully represent plaintiffs in many class actions in the past years. As noted here and in
14 detail in my Class Certification Motion Declaration (Doc. 25-1) ("Ackermann Class Cert Decl."),
15 numerous state and federal courts in California have found that my firm and my co-counsel are
16 competent and capable of representing classes of employees with similar claims to those alleged here,
17 including the Eastern District of California. For example, we have successfully obtained class
18 certification and been appointed as adequate class counsel in numerous cases where contested class
19 certification motions were filed and fully briefed, including this case. *See, e.g.*, (1) *Moss v. USF*
20 *Reddaway, Inc.*, No. 5:15-CV-01541-JAK-FFM, (C.D. Cal June 30, 2017) (Hon. Judge John A.
21 Kronstadt) Order Granting Plaintiff's Motion for Class Certification (Dkt. No. 80); (2) *Morrison v.*
22 *Knight Transportation, Inc.*, Tulare County Superior Court, Case No. 228016, Nov. 13, 2009 Order
23 Granting Plaintiff's Motion for Class Certification (Hon. Lloyd Hicks) (granting certification of class of
24 over 2,000 truck drivers, which later grew to 4,111 drivers, with claims for, inter alia, failing to provide
25 duty-free meal breaks); (3) Order Adopting Findings and Recommendations, *Clayton v. Knight*
26 *Transportation, Inc.*, No. 1:11cv0735 LJO DLB, 2012 WL 3638026 (E.D. Cal. Aug. 21, 2012) (Hon.
27 Lawrence O'Neil); Findings and Recommendations Regarding Plaintiff's Motion for Class
28 Certification, *Clayton v. Knight Transportation, Inc.*, No. 1:11cv0735 LJO DLB, 2012 WL 2912395

1 (E.D. Cal. July 16, 2012) (U.S. Magistrate Judge Dennis L. Beck) (recommending certification of class
2 action for 2,000 truck drivers alleging claims for unpaid orientation time); (4) *Anderson v. Andrus*
3 *Transportation*, San Bernardino County Superior Court, Case No. CIV DS 915878, August 16, 2011
4 Order Granting In Part Plaintiff's Motion for Class Certification (class certification granted to class of
5 over 550 truck drivers with claims for unpaid minimum wages and derivative claims); and (5) *Trujillo*
6 *v. WinCo Foods, LLC*, Stanislaus County Superior Court, Case No. 622364, March 16, 2011 Order
7 Granting Plaintiff's Motion for Class Certification (granting class certification of missed meal and rest
8 break claims and derivative claims to class of 150 truck drivers). In each of these cases, the trial court
9 judges determined that my firm and I were competent and adequate class counsel, or co-class counsel,
10 following a contested motion for class certification. The Court also found in its Order Granting
11 Plaintiff's Motion for Class Certification (Doc. 35) that my firm and my co-counsel are adequate Class
12 Counsel.

13 7. Given the risks inherent in litigation and the defenses asserted, I believe that this
14 Settlement before the Court for final approval is fair, adequate, reasonable, and is in the best interest of
15 the Class Members. Moreover, continued litigation would be costly, time consuming, and uncertain in
16 outcome. By contrast, the Settlement ensures timely relief and substantial recovery of the wages,
17 penalties, and premiums that Plaintiff contends are owed to the Class.

18 *Attorney Experience and Contributions*

19 8. The PA Order states that "Craig J. Ackermann of Ackermann & Tilajef, P.C. and Julian
20 Hammond of HammondLaw, P.C., are appointed as class counsel for settlement purposes." PA Order,
21 p. 30. As demonstrated by our numerous successes in wage and hour employment law actions, including
22 in this particular area of law, both Ackermann & Tilajef, P.C. and HammondLaw, P.C. are experienced
23 and skilled law firms with experience representing employees in California wage and hour class actions.
24 In an avoidance of redundancy, I will not repeat all facts supporting my experience, nor recount the
25 factual and procedural history already set forth in my Declaration in Support of Preliminary Approval.
26 However, it is worth reiterating that I have been exclusively practicing employment law for over 25
27 years and have successfully represented well over 250,000 workers in more than 300 wage and hour
28 class actions since 2004. My firm has particular expertise representing truck drivers. *See Ackermann*

1 Class Cert Decl., (Doc. 25-1) ¶ 22.

2 9. I, along with the attorneys, paralegals, and legal assistants at our law firm, have diligently
3 investigated and prosecuted this case to a successful conclusion. Our work, in conjunction with the work
4 of our co-counsel, resulted in the creation of a partially-reversionary settlement amount for the benefit
5 of the Class. As a result of our efforts, we were able to obtain a favorable Settlement for the Class where
6 it was very possible that the Class could have received nothing due to the Ninth Circuit deciding that
7 FMCSA preemption is retroactive eliminating two of Plaintiff's three remaining claims. *See, See*
8 *Valiente v. Swift Transp. Co. of Ariz., LLC*, 54 F. 4th 5871 (9th Cir. Nov. 23, 2022). Because of the
9 significant risks involved in litigating the case, particularly the contested legal and factual issues,
10 including among other things, FMCSA preemption, I believe this Settlement is fair, reasonable, and
11 favorable to the Class, particularly in light of the many risks posed.

12 10. I participated primarily in drafting and reviewing the pleadings in this case, including,
13 drafting the motion for class certification, taking Defendant's 30(b)(6) deposition, editing the mediation
14 brief, attending the mediation, and reviewing the settlement and approval motion papers.

15 11. The following is a more detailed summary of the experience and contributions of some
16 of the attorneys and staff associated with our firm on this case:

17 a. Avi Kreitenberg has been admitted to practice law in California since 2009, and
18 has participated in, among other things, drafting briefs and pleadings, including the reply to Defendant's
19 opposition to Plaintiff's motion for class certification and the preliminary approval papers.

20 b. Brian Denlinger has been admitted to practice law in Colorado since 2012 and
21 Washington State since 2018. Mr. Denlinger participated in informal discovery during the case.

22 c. Sam Vahedi has been admitted to practice law in California since 2012, and has
23 significantly participated in, among other things, drafting pleadings, including the motion for class
24 certification, drafting written discovery, drafting the mediation brief, negotiating the settlement, and
25 drafting the preliminary approval papers.

26 d. Our legal assistant, Jaclyn Blackwell, has over 8 years of legal experience,
27 including working on complex litigation matters and class actions. She provided administrative
28 assistance throughout this case.

12. Our co-counsel and our firm sought to efficiently manage, staff, assign, and divide the work between their respective attorneys and to avoid duplication of effort. As summarized in the chart in the section below, to date, my firm has expended no less than **461.07** hours in connection with the prosecution of this action for a total lodestar of no less than **\$283,335.12** to date. Our co-counsel has set forth its lodestar information in its respective declaration submitted herewith.

Attorneys' Fees

13. Under the terms of the Settlement Agreement, Class Counsel is collectively requesting attorneys' fees in the amount of 25% of the Gross Settlement Amount (i.e., \$100,000). As discussed in the Motion for Preliminary Approval, the Renewed Motion for Preliminary Approval, and Motion for Attorneys' Fees and Costs, this fee amount is fair, reasonable and less than the typical fee awards in settlements we have obtained in similar class action cases approved by district and state courts throughout California, including this district. Class Counsel is seeking the benchmark fee amount in this Circuit of 25% of the common fund generated for the benefit of the Class, which is patently reasonable.

14. Moreover, if it becomes necessary to litigate this matter further, my firm and our co-counsel have the financial resources and are prepared to devote whatever time and effort are required to zealously advocate on behalf of Plaintiff and the Class.

15. The following table summarizes the time each timekeeper at our firm expended on this case, their respective years of experience, and hourly billing rates, which have been approved by California state and federal Courts in other wage and hour class actions:

Ackermann & Tilajef, P.C. Lodestar Summary				
	Yrs.	Hours	Rate	Amount
Craig Ackermann, Esq.	25	63.06	\$919	\$57,952.14
Avi Kreitenberg, Esq.	14	32.52	\$764	\$24,842.73
Sam Vahedi, Esq.	10	308.0	\$600	\$184,800.00
Brian Denlinger, Esq.	10	5.67	\$676	\$3,830.67
Jaclyn Blackwell	8	16.15	\$200	\$3,230.00
Amanda Lutsock	4	0.07	\$350	\$23.33
Laurie Ritz	4	1.5	\$200	\$300.00
Kaitlyn Morales	2	1.35	\$125	\$168.75
Jules Bienenfeld	1	32.75	\$250	\$8,187.50
TOTAL		461.07		\$283,335.12

1 16. True and correct copies of the contemporaneous time records maintained by Ackermann
2 & Tilajef, P.C. for the services performed in this case are attached hereto as **Exhibit 1**.

3 17. In addition, the table above does not include the additional hours our firm anticipates
4 spending between now and the conclusion of this matter, including drafting and filing Plaintiff's Motion
5 for Final Approval and supporting papers, our time in connection with traveling to, preparing for, and
6 appearing at the final approval hearing, corresponding with the settlement administrator and opposing
7 counsel throughout the settlement administration process, corresponding with our client, writing tax
8 letters to our client, notifying the LWDA of the final approval order, and other typical and reasonably
9 necessary tasks that arise post-final approval.

10 18. Notably, our 2021 and earlier yearly rates have been approved by numerous Courts. *See*
11 *e.g. Pagh v. Wyndham Vacation Ownership, Inc.*, Case No. 8:19-cv-00812-JWH-ADS, Order Granting
12 Plaintiffs' Motion for Attorneys' Fees and Costs, dated March 23, 2021, including detailed discussion
13 and approval of our firm's rates for 2021; *Hollis v. Union Pacific Railroad Co.*, Case No. 5:17-cv-
14 02499-JGB-SHK, Order Granting Final Approval and Attorneys' Fees, dated September 19, 2018
15 (Docket No. 28) ("Here, Plaintiff's counsel billed at hourly rates ranging from \$200-\$800 for attorney
16 timekeepers. ... Craig Ackerman billed \$800/hour. ... The Court reviewed the experience of the
17 respective attorneys and finds the amount billed per hour to be reasonable."); *Moss v. USF Reddaway,*
18 *Inc.*, Case No. 5:15-cv-01541-JAK-FFM, See Docket No. 124 at p. 13 of 15 (Order Granting Final
19 Approval, dated July 25, 2018), the Hon. Judge John Kronstadt (noting that "The attorneys and
20 paralegals who worked on this matter have substantial experience in complex employment litigation ...
21 For example, Craig Ackermann has served as lead counsel or co-lead counsel in more than 200 class
22 actions during his 23-year career", and the court approved my hourly rates of \$660 to \$800 for each
23 respective year of the litigation, including \$715 for work in 2018, as "within the range of
24 reasonableness" for the "hourly rates that are charged within this District") (trucker piece-rate class
25 action); *Santamour v. UPS Freight, Inc.*, Case No. 2:17-cv-00196, ECF No. 33 (Order Granting Final
26 Approval, dated June 26, 2018) (the Hon. Chief Judge Thomas Rice of the Eastern District of
27 Washington) ("The Court, based on its independent review as well as its review of the supporting
28 documents submitted by Plaintiffs, finds the rates billed by Plaintiffs' counsel and paralegals are

1 commensurate with the prevailing rates for similar representation in the relevant market”, and approved
2 my rate at \$717 per hour) (trucker piece-rate class action).

3 A&T Costs

4 19. To date our firm has incurred **\$13,289.41** in litigation costs in connection with this case.
5 An itemized list of costs is attached as **Exhibit 2** hereto. All of these costs were and are reasonably
6 necessary for the successful prosecution of this action.

7 Plaintiff's Service Award

8 20. The Settlement contemplates a service/enhancement award to the Plaintiff in an amount
9 of \$10,000.00, to recognize the time and effort he expended on behalf of the Class over the course of
10 over five years, including participating in several lengthy interviews and phone conferences over a
11 period lasting several months, searching for and producing a significant amount of relevant documents,
12 reviewing pleadings in the case, consulting with Class Counsel on key factual issues, reviewing
13 documents and data provided by Defendant, communicating about the case with Class Counsel and
14 fellow Class Members, keeping in contact with Class Counsel regarding the status of the case, providing
15 multiple declarations, reviewing and approving the settlement documents, and being available during
16 the all-day mediation. In total Plaintiff spent no less than 60-80 hours in connection with the case.
17 Further Plaintiff accepted the financial risk in pursuing this litigation, and entered into a release that is
18 broader than the Class release. The Class would have received no benefit from this action had it not been
19 for the contributions of Plaintiff. As noted, in contrast to the more limited class release, Plaintiff also
20 agreed to a more robust general release of his claims. Additionally, the requested award is well in line
21 with incentive awards granted in similar wage and hour class actions in California.

22
23 I declare under penalty of perjury under the laws of the United States and the State of California
24 that the foregoing is true and correct. Executed on July 14, 2023 in Beverly Hills, California.

25
26 /s/ Craig J. Ackermann
27 Craig J. Ackermann
28